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| IN THE MATTER OF | : | BEFORE THE |
| JOSEPH J. HUANG & | : | HOWARD COUNTY |
| CATHERINE HUANG | : | BOARD OF APPEALS |
| Petitioner | : | HEARING EXAMINER |
| | : | BA Case No. 08-032V |

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DECISION AND ORDER

On September 2, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Joseph J. Huang and Catherine Huang for a variance to reduce the 30-foot project setback to 8 or 11 feet for a proposed deck and gazebo structure to be constructed to the rear of a single-family detached dwelling in an R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Joseph J. Huang and Andy Warfield testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 8,522 square foot, triangular shaped property is located on the east side of Pale Morning Dun Road about 620 feet south of Royal Coachman Drive and is also known as 4939

Pale Morning Dun Road (the "Property"). The Property lies in the 1st Election District and is identified on Tax Map 31, Block 11 as Parcel 160, Lot 34. It is part of the Cascade Overlook subdivision.

2. The curving front lot line appears to be about 41± feet wide, the rear, about 127 ± feet wide. The northern side lot side is significantly deeper than the southern lot line. The Property is improved by a two-story single-family detached dwelling. Access is provided via a driveway lying near the south lot line and ending at a two-car attached garage.

3. Vicinal Properties. Adjacent properties are also zoned R-ED. The property to the north is an Open Space lot, which is the site of a stormwater management facility. Immediately adjoining the northern side lot line is a nonbuildable parcel. The properties to the east are larger residential lots improved with single-family detached dwellings. These dwellings share a long driveway that runs behind the Property and leads to Landing Road to the south. The southern and western lots are part of the Cascade subdivision. During my site visit, it appeared that the subject property had the narrowest frontage and was irregularly shaped.

4. The Petitioner is requesting a variance from Sections 107.D.c(2) and 128.1.d to construct a rear deck and gazebo. According to the variance plan, the proposed deck is about 32± feet wide and between 12 and 14 feet deep. The 10' x 10' octagonal gazebo to be constructed in the northeast corner of the deck would be situated 11 feet from the project boundary. According to the deck drawing, and Mr. Warfield's testimony, the depth of the deck/gazebo is about 22-23 feet, which means a setback of 7 or 8 feet, which is 10-11 feet more than the permitted 10-foot deck encroachment.

5. Andy Warfield testified the total deck/gazebo would be 38 feet wide and 22 feet deep. Without the gazebo, the deck itself would be 32 feet by 15 feet. He also stated the gazebo would be screened to create an outdoor area protected from mosquitoes.

6. Joseph Huang testified that the nonbuildable parcel is a future driveway and that the nearest dwelling behind the house is some distance away. He also stated the back yard sloped due to a swale, which runs through the back property and prevented the construction of a patio.

7. During the hearing, I expressed concern that the deck/gazebo was not the minimum reasonably necessary and asked the property owner if the gazebo could be rotated to reduce the encroachment. Mr. Huang replied that he did not want to block the view from his windows.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the deck complies with Section 130.B.2.a(1) through (4), and therefore may be granted, but not the gazebo, which does not comply with Section 130.B.2a(4).

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, there is no dispute that the lot is irregularly shaped and has a swale running through the back section. Consequently, I conclude the narrowness of the Property's shape and topography are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed deck will be used for a permitted purpose. As the evidence shows, and as I observed, many neighboring dwellings have rear decks, though none are as large as the one proposed. The variance for the deck, if granted, will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use

or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulation arises from the Property's shape and topography and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. Although the deck is the largest requested (in total square footage) in my tenure as a hearing examiner, in my view it is a reasonable request because the swale prevents use of the rear yard and the deck will encroach into the setback only 4-7 feet more than is permitted. Within the intent and purpose of the regulations, then, the deck variance, while pushing the limit of what zoning law means by the "minimum necessary to afford relief," meets the requirements of Section 130.B.2.a(4).

The same cannot be said of the gazebo, which, if permitted, would result in a 100 percent or greater encroachment into the setback, according to Mr. Warfield's testimony that the deck/gazebo combination would be 22 feet deep (resulting in a 8-foot setback). In my view, the gazebo addition is not the minimum reasonably necessary where the size of the deck itself stretches the meaning of reasonable and customary.

It is also well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, *id.* While it may be desirable for the Petitioners to erect an enclosed gazebo for personal comfort without blocking the view from a window, it is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the orderly development of land through the imposition of

uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to the Petitioner to accommodate the owners' personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

ORDER

Based upon the foregoing, it is this 8th Day of September 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Joseph J. Huang & Catherine Huang for a variance to reduce the 30 - foot project boundary setback to 8 or 11 feet for a combined deck and gazebo structure is **DENIED**;

HOWEVER, the Petitioners' variance request to construct a 32± foot wide by 14 or 15- foot deep deck, thereby reducing the project boundary setback to 15 feet in an R-ED (Residential: Environmental Development) Zoning District, is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck use and structure as described in the petition submitted and not to any gazebo or other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

9/9/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.